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C E N T E R F O R M E D I A E D U C A T I O N

June 1, 1994

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JUN 1 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW Room 222  
Washington, DC 20554

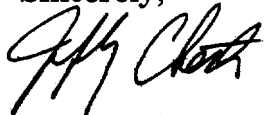
Dear Mr. Caton:

Re: MM Docket 92-266

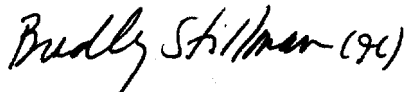
On behalf of the Center for Media Education and the Consumer Federation of America, please find enclosed two copies of a written *ex parte* presentation for Chairman Reed Hundt regarding the above rulemaking.

Copies of this memo will be hand-delivered to the Chairman and Special Assistant Merrill Spiegel today.

Sincerely,



Jeffrey Chester  
Center for Media Education

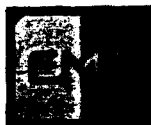


Bradley Stillman  
Consumer Federation of America

Enclosures

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EX PARTE OR LATE FILED

C E N T E R F O R M E D I A E D U C A T I O N

June 1, 1994

The Honorable Reed Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, NW, Room 814  
Washington, DC 20554

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JUN 1 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Dear Chairman Hundt,

We recently met with Merrill Spiegel to discuss the inability of nonprofit organizations to use cable leased access channels because of current FCC pricing policies.

Ms. Spiegel stated your interest in the matter, and requested that we provide your office with a memorandum detailing our position on the appropriate rate that nonprofits should be charged when leasing cable channels. Enclosed is the requested memo, which urges that a special rate for nonprofits be established, and that incremental cost be the basis for that rate.

Such a policy would allow nonprofits to utilize cable leased access without the suggestion of a subsidy. Additional information about our request for a nonprofit rate can be found in our Petition for Reconsideration of June 21, 1993 (MM Docket 92-266).

Sincerely,

Jeffrey Chester  
Center for Media Education

Bradley Stillman  
Consumer Federation of America

cc: Merrill Spiegel

# MEMORANDUM

To: The Hon. Reed Hundt

From: The Center for Media Education  
The Consumer Federation of America

Date: May 27, 1994

Re: Non-Profit Rates for Leased Access Cable Channels

## Background

The Center for Media Education ("CME") and the Consumer Federation of America ("CFA")<sup>1</sup> each participated extensively in the Commission's rulemaking on leased access cable channels,<sup>2</sup> filing detailed comments. CME has filed a Petition for Reconsideration in that proceeding.

The issue of the appropriate rate to be charged to non-profit organizations for leasing cable channels is important to both CME and CFA. CME/CFA have met with your staff to discuss leased access, and prepared this memo at their request.

In various filings in the above-captioned proceedings, CME advocated leased access channel rates for non-profit organizations amounting to 0.1 cents per subscriber per month, or

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<sup>1</sup> The Center for Media Education is a non-profit public interest policy and research organization dedicated to promoting the democratic potential of the electronic media. It maintains an active interest in leased access cable matters before the Commission. The Consumer Federation of America is the nation's largest consumer advocacy organization, composed of over 250 state and local groups with some 50 million members, whose purpose is to represent consumer interests before the Congress, federal agencies, and the courts.

<sup>2</sup> MM Docket 92-266. The Center for Media Education's pleadings were filed on behalf of itself and a number of other non-profit organizations: the Association of Independent Video and Filmmakers, the National Association of Artists' Organizations, and the National Alliance for Media Arts and Culture.

3% of gross revenues derived from leasing, whichever is greater.<sup>3</sup>

Incremental Cost as a Basis for Non-Profit Leased Access Cable Channel Rates

Since CME's filings were made, CME and CFA have undertaken a study of the incremental cost of providing a full-time leased access cable channel to a non-profit organization. According to the attached statement of Laura Brenton, a cable operator's one-time capital cost of adding a 24-hour leased access channel to a cable system is \$3,850 (given a set of assumptions which generally maximize that figure), and the annual operating cost to the cable operator of carrying a 24-hour leased access channel is \$90.

Based upon an 18% cost recovery factor, which is conventionally used in utility calculations, a cable operator's annual revenue requirement due to the \$3,850 in capital cost is \$693. To this we add the annual incremental operating cost of \$90. The total incremental cost to the cable operator of leasing a full-time channel to a non-profit organization is thus \$783 annually per cable system.<sup>4</sup> For the purposes of this Memorandum, this amount will be referred to as the Annual Incremental Cost.

The Annual Incremental Cost can be recovered through a flat monthly fee of \$65.25 per month per cable system.<sup>5</sup>

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<sup>3</sup> See, for example, comments of CME in MM Docket 92-266, dated January 27, 1993, p. 17.

<sup>4</sup> See the attached statement of Laura Brenton. This figure assumes that all of the equipment required for signal origination will be provided by the channel lessee (such as satellite receivers, new satellite dishes, videotape playback equipment, etc.), and operated at the lessee's cost.

<sup>5</sup> This figure is derived simply by dividing \$783 by 12.

Based upon CME's extensive work with non-profit organizations, CME/CFA believe that the above-listed rates are reasonable enough that non-profits will utilize cable leased access at the above rates---in contrast with the rates for commercial organizations, which in CME's judgment will be far too expensive for non-profits to afford.

As well, the fact that the above rates are based upon incremental cost removes the suggestion that low rates to non-profit organizations are subsidized by cable subscribers or cable operators.

Accordingly, CME and CFA hereby recommend that the Commission adopt a maximum reasonable rate of \$65.25 per month per cable system for non-profit lessees.<sup>6</sup> Part-time lease rates for non-profit organizations would be pro-rated from the above full-time rates.

One can express the monthly \$65.25 lease fee as a monetary amount per subscriber per month, as CME did in its original comments in the leased access proceeding. In fact, the CME/CFA recommendations set forth in this memo are similar to CME's original proposal as they pertain to cable systems serving most of the American public. According to the *1994 Television and*

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<sup>6</sup> In this connection, the Commission should require that the channel lessee provide all of the equipment required for signal origination (such as satellite receivers, new satellite dishes, videotape playback equipment, etc.), and operate such equipment at the lessee's cost. (Naturally, non-profit programmers and cable operators would be free to make voluntary arrangements for the operator to provide signal origination equipment, either for a fee or gratis.) At the same time, the Commission should require the cable operator to provide a modulator for the channel, as well as indoor rack space and outdoor space for the lessee's equipment, given that the cost of such is recovered by the fees paid by the non-profit lessee.

*Cable Factbook*,<sup>7</sup> more than 35.5 million subscribers---almost two-thirds of the national total---receive their service from cable systems having at least 20,000 subscribers. There are 650 systems which have at least 20,000 subscribers, producing a mean size of 54,664 subscribers for systems in this category. At \$65.25 monthly, the per-subscriber rate is 0.12 cents per subscriber per month, vs. 0.10 which CME recommended in its comments.

Should you or members of the Commission staff have questions concerning this memorandum, kindly contact the following:

Bradley Stillman  
Consumer Federation of America  
1424 16th Street, N.W.  
Washington, DC 20036  
(202) 387-6121

or

Jeffrey Chester  
Center for Media Education  
Suite 518  
1511 K Street, N.W.  
Washington, DC 20005  
(202) 628-2620

## **Statement of Laura Brenton**

My name is Laura Brenton. Since 1989, I have served as general manager of The 90's Channel, which leases 24-hour cable channels from Tele-communications, Inc. The 90's Channel has operated on a 24-hour basis on nine different cable systems, ranging in size from approximately 10,000 subscribers to more than 200,000 subscribers.

The 90's Channel is a project of Denver Area Educational Telecommunications Consortium, Inc. (DAETC), a Colorado non-profit corporation. In addition to operating The 90's Channel, which is directed at a general audience, DAETC delivers educational television programming to elementary and secondary schools in the Denver area by Instructional Television Fixed Service.

In my capacity as general manager of The 90's Channel, I have been responsible for the technical operations of the channel and involved in virtually all of our equipment purchases. I have contracted for The 90's Channel equipment installations when the channel has been added to cable systems, and served as liaison with cable system technical personnel. I am well versed in the capital and operating costs associated with establishing and operating leased access channels.

I have been asked to estimate the incremental cost to a cable operator of carrying a full-time leased access cable channel.

### **Key Assumptions.**

I am assuming that, except for the modulator and equipment rack, all of the equipment required for signal origination will be provided by the channel lessee (such as satellite receivers, new satellite dishes, videotape playback equipment, etc.), and operated at the lessee's cost. Based upon The 90's Channel's experience, such costs are customarily paid by the channel lessee. Because these are not the cable operator's costs, they are excluded from these calculations.

Naturally, not all of the costs listed herein are required in all circumstances. For example, if programming is delivered on tape, no outside ground will be required for satellite dishes. On the other hand, if the signal is delivered by satellite, the equipment rack space required by the channel lessee will be far less than assumed in these figures. However, in the interests of maximizing estimated costs, I will assume that all of the above

expense categories are entailed in a given installation.

Finally, I am assuming that only one program origination point will be required per cable system, based upon the fact that such has been The 90's Channel's experience.

#### Incremental Capital Costs.

If the channel to be leased is currently dark, it will be necessary to buy and install a modulator.<sup>1</sup> I recently contacted manufacturers of modulators, who quoted prices ranging from \$600 to \$800 for a single frequency-agile modulator in quantities normally sold to cable operators. Based upon contacts with manufacturers and installation personnel, I estimate modulator installation cost at \$150.

In addition, there are interface installation costs, which is the one-time cost to "plug in" the video signal source provided by the leased access channel to the modulator. Based upon the experience of The 90's Channel in carrying out a number of such installations, I estimate the average costs at \$150.

If a significant amount of equipment is to be installed, it will be necessary to provide a 19" equipment rack. The cost of a 19" equipment rack is approximately \$750.

If a satellite receive antenna is required, I estimate the maximum expense to the cable operator would be the cost of land provided for a new satellite dish, which is typically 4.5 meters in diameter, requiring approximately 200 square feet of ground. At \$10 per square foot, the cost of land would amount to \$2,000.<sup>2</sup>

#### Incremental Operating Costs.

It will be necessary to power the modulator. Based upon my conversations with manufacturers, I estimate the average annual power consumption at between 100 and 300 kw hours. At \$0.10 per kw hour, which I believe is a higher than average rate, annual power costs will amount to approximately \$30.

Sometimes there are occupancy costs entailed in providing space

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<sup>1</sup> Often, I believe that the cable operator already uses channels to be leased for other services. In these cases, the channel is not dark, and it will not be necessary for the operator to purchase or install a modulator.

<sup>2</sup> In many cases, land will not be an incremental cost to the cable operator because the operator already has sufficient land to add another satellite receive antenna. Further, if the channel lessee's signal is delivered via a satellite which the cable operator is already equipped to receive, there is no incremental land (or other) cost entailed in sharing the cable operator's satellite dish.



for signal origination equipment provided by the channel lessee. In certain cases, signals are originated on videotape or videodisc, and the players are located on the cable operators premises. In other cases, signals are delivered by satellite or terrestrial microwave. In those instances, receiving equipment needs to be located at the cable headend.

It is almost always possible to accommodate all of a channel lessee's equipment in a single 19" equipment rack, which occupies no more than four square feet of floor space. At \$15 per square foot occupancy cost, I estimate the annual indoor space cost at \$60.<sup>3</sup>

#### Summary.

The cost to a cable operator of carrying a leased access channel is not a function of how many households subscribe to a cable system. Rather, it is a function of the number cable systems carrying a channel.

The figures listed below are the costs for a single system, assuming that all expense categories are required (and, as explained above, it is unlikely that an operator would have to spend money in all these categories for a given system). Where a range of costs is described in the above narrative, I have used the highest cost listed.

#### Capital Costs (One-Time Expenses)

Modulator and Installation	\$ 950
Interface Installation	150
Equipment Rack	750
Land Cost for Receive Antenna	2,000
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Total Capital Costs	\$ 3,850

#### Operating Costs (Annual)


Electric Power	\$ 30
Occupancy Cost for Equipment	60
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Total Annual Operating Costs:	\$ 90

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<sup>3</sup> In many cases, occupancy will not be an incremental cost to the cable operator because the operator already has sufficient indoor space to accommodate additional equipment.

I hereby certify that the foregoing information is true and correct to the best of my knowledge and belief.

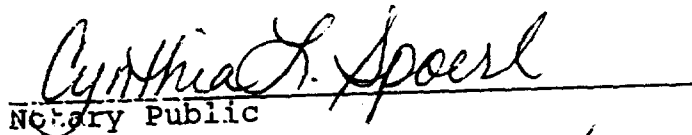
Signed,



Laura Brenton  
The 90's Channel  
P.O. Box 6060  
Boulder, CO 80306  
(303) 442-2707

Dated: May 27, 1994

Sworn to and subscribed before me  
this 27th day of May, 1994.

  
Notary Public

My commission expires: 12/12/95